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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

CHARLES EDWIN FREEMAN,

Defendant and Appellant.

2d Crim. No. B232850  
(Super. Ct. Nos. SA075445 & SA075448)  
(Los Angeles County)

Charles Edwin Freeman appeals from orders of the trial court revoking probation. We remand to the trial court to correct an illegal sentence and otherwise affirm.

**FACTUAL AND PROCEDURAL BACKGROUND**

The trial court granted Freeman probation in two cases. In case No. SA075445, he was convicted of forgery. (Pen. Code, § 470, subd. (b).) In Case No. SA075488, he was convicted of second degree commercial burglary (§ 459), forgery (§ 470, subd. (d)), and identity theft (§ 530.5, subd. (a)). He also admitted to serving a prior prison term. (§ 667.5, subd. (b).) In both cases, the trial court suspended execution of sentence and placed Freeman on formal probation for five years.

Freeman's conditions of probation required him to obey all laws, to use only his true name, not to possess a credit card except in his true name, not to possess narcotics, not to associate with drug users, and to stay away from places where drug users

congregate, among other things. Freeman also agreed to submit to search and seizure without a warrant or probable cause.

While Freeman was on probation, police officers went to his condominium to investigate neighbors' complaints about "a lot of activity going in and out of the apartment . . . at all hours of the day." The officers knew it was Freeman's apartment from prior arrests. They saw Freeman walk from the apartment to his car. They stopped and searched him. They found a driver's license in his wallet with the name "Edwin Gromis," but with Freeman's photograph. They also found two credit cards in the wallet with the name Edwin Gromis. Officer Luis Muchaca said, "Charlie, you changed your name."

Freeman gave the officers a key and they searched his apartment. They found narcotics and narcotics paraphernalia on the dining room table, on a computer desk, in a hutch, and inside a make-up bag. Three women were in the apartment. One sat at the table, one sat at the computer desk, and one stood in the hallway.

After a contested hearing, the trial court found that Freeman violated his probation in both cases. The court denied probation and ordered Freeman to serve four years four months in prison for the combined cases.

## DISCUSSION

### *Sufficiency of Evidence to Support Revocation*

Freeman contends that the evidence did not support the trial court's finding that he violated the conditions of his probation. We disagree.

The burden of proof at a probation revocation hearing is by a preponderance of the evidence. (*People v. Rodriguez* (1990) 51 Cal.3d 437, 447.) We review the trial court's findings for abuse of discretion. (*People v. Kelly* (2007) 154 Cal.App.4th 961, 965.) "[O]nly in a very extreme case should an appellate court interfere with the discretion of the trial court in the matter of denying or revoking probation." (*People v. Lippner* (1933) 219 Cal. 395, 400.)

The trial court did not abuse its discretion in revoking probation. Officer Luis Muchaca testified that Freeman had a license and two credit cards in the name of Edwin Bromis in his wallet. Freeman contends the prosecution did not establish that the

credit cards were valid, but the validity of the credit cards is immaterial. A condition of Freeman's probation did not allow him to possess any credit card not in his true name.

Officer Muchaca also testified that he found narcotics in Freeman's apartment. Freeman contends that the narcotics may have belonged to the other people in his apartment, and that the prosecution did not prove that he knew these other people were narcotics users. But Freeman had only been gone from the apartment for 15 or 20 minutes when the officers found narcotics in his apartment. Narcotics were on the tables and stored in a hutch. The women who were sitting at the table and the desk were his visitors, according to his roommate's testimony. The court could reasonably infer that Freeman knew narcotics were in his apartment and knew narcotics users were congregating there. We resolve all inferences and conflicting evidence in favor of the trial court's decision. (*People v. Kurey* (2001) 88 Cal.App.4th 840, 848-849, fns. omitted.)

#### *Ineffective Assistance of Counsel*

Freeman contends that his counsel rendered ineffective assistance when he did not challenge the legality of the search of Freeman's apartment on Fourth Amendment grounds. He contends the search was unlawful because it was motivated by personal animosity.

Counsel's performance was not deficient. (*Strickland v. Washington* (1984) 466 U.S. 668, 688.) The search of Freeman's apartment was lawful, with or without suspicion, pursuant to the terms of his probation. A probation search is unlawful if it is undertaken for the sole purpose of harassment or for an arbitrary and capricious reason. (*People v. Bravo* (1987) 43 Cal.3d 600, 610.) But the sole purpose was not harassment. Officer Machuca testified that neighbors' complaints triggered the investigation. That Machuca knew Freeman, knew it was Freeman's apartment, and said to Freeman, "Charlie, you changed your name," does not demonstrate that personal animosity was the sole reason for the search.

#### *Illegal Sentence*

The trial court miscalculated Freeman's sentence. The total term should have been six years or five years four months. We will remand to the trial court correct the unauthorized sentence. (*People v. Turner* (2002) 96 Cal.App.4th 1409, 1415.)

Upon conviction in case No. SA075445, the trial court suspended execution of a term of three years in state prison for forgery (the upper term). Upon conviction in case No. SA075488, the trial court suspended execution of a term of five years four months in state prison, consisting of three years for the burglary (the upper term), eight months for the forgery (one-third the midterm), eight months for the identity theft (one-third the midterm), and one year for the prior prison term.

Upon revocation of probation, the trial court selected case No. SA075445 as the principal term. Pursuant to section 1170.1, subdivision (a), the total sentence should have been six years, consisting of three years for forgery in case No. SA075445, plus one-third the midterm for each conviction in case No. SA075488 (eight months for burglary, eight months for forgery, and eight months for identity theft), plus one year for the prior prison term enhancement in case No. SA075488. Alternatively, the trial court could have run case No. SA075445 concurrent with case No. SA075488, resulting in a total sentence of five years four months.

#### DISPOSITION

The trial court is directed to correct the sentence, the court's minutes and the abstracts of judgment consistent with the views expressed in this opinion. The trial court shall forward the corrected abstracts to the Department of Corrections and Rehabilitation. In all other respects, the judgments are affirmed.

NOT TO BE PUBLISHED.

GILBERT, P.J.

We concur:

YEGAN, J.

PERREN, J.

Cynthia Rayvis, Judge  
Superior Court County of Los Angeles

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Fay Arfa, under appointment by the Court of Appeal, for Defendant and Appellant.

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